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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

DWAYNE DARRISH GRAHAM,

Defendant and Appellant.

C070384

(Super. Ct. No. 08F07515,
09F00563)

Following a guilty plea, defendant Dwayne Darrish Graham was granted five years' probation. The trial court imposed a \$200 restitution fund fine (Pen. Code, § 1202.4),¹ and a \$200 probation revocation fine was imposed and stayed (§ 1202.44). Later, upon probation being revoked, the trial court imposed a \$600 restitution fine. Defendant appeals the imposition of this second restitution fine as an unauthorized sentence. We agree with defendant and correct the judgment.

¹ Undesignated statutory references are to the Penal Code.

RELEVANT BACKGROUND AND PROCEDURAL HISTORY²

In 2009 defendant pleaded guilty to robbery and was granted five years' formal probation. A \$200 restitution fund fine was imposed under section 1202.4, and a corresponding \$200 probation revocation fine was imposed and stayed under section 1202.44. Following a probation search of his home in 2011, defendant was found in possession of ammunition. A contested probation hearing was held and the court found defendant had violated the terms of his probation. Probation was revoked, and defendant was sentenced to a term of five years in state prison and awarded 426 days of credit for time served. On the issue of restitution, the court stated, "the laws also require that I impose the mandatory restitution fine as indicated by law. I will order that in the amount of \$600 payable forthwith or as provided by the Penal Code; suspend the state prison parole fine pending successful completion of his parole; delete the booking and classification fee." The minutes and abstract of judgment each reflect that a \$600 restitution fund fine was imposed under section 1202.4. The minutes and abstract of judgment also reflect the imposition of a \$600 parole revocation fine under section 1202.45.

DISCUSSION

Relying on *People v. Chambers* (1998) 65 Cal.App.4th 819, 820 (*Chambers*), defendant contends the trial court erred in imposing a second restitution fund fine in the amount of \$600. The People respond that the trial court's statement reflects it aggregated each of the \$200 fines imposed under sections 1202.4, 1202.44, and 1202.45. Thus, the People claim, it is not the judgment itself that is erroneous, but the abstract of judgment and minute order that incorrectly reflect the judgment imposed. Based on the record before us, we agree with defendant.

² The substantive facts underlying defendant's convictions are not relevant to the issue raised on appeal and are therefore not recounted.

We acknowledge there is some mathematical appeal to the People's argument that the \$600 fine imposed was an aggregation of three separate \$200 restitution fines under sections 1202.4, 1202.44, and 1202.45. But if the trial court was attempting to impose three separate statutory fines, it should have verbally specified each additional fine and fee imposed, along with the statutory basis for each, during the pronouncement of judgment. (*People v. High* (2004) 119 Cal.App.4th 1192, 1200.)

Moreover, the People's argument does not find support in the record. The trial court stated it was imposing a singular \$600 restitution fine, not three separate fines, each with a distinct statutory basis. The trial court did not use any language to suggest it was merely restating the previously imposed restitution fine and aggregating it with two separate fines. Furthermore, as we have previously indicated, "there is no need to reimpose an extant restitution fine. Where a restitution fine(s) has been previously imposed, the trial court should simply say, 'The abstract of judgment should reflect the restitution fine(s) previously imposed.' " (*People v. Cropsey* (2010) 184 Cal.App.4th 961, 966.) Furthermore, the clerk's minutes and the abstract of judgment reflect the imposition of a \$600 restitution fund fine and a \$600 parole revocation fine, not three \$200 fines. Contrary to the People's claim, this is a record that affirmatively demonstrates error.

Because the \$200 restitution fine the trial court initially imposed under section 1202.4 survived revocation of defendant's probation, the second \$600 restitution fine imposed was unauthorized and must be stricken. (*Chambers, supra*, 65 Cal.App.4th at p. 820.) "[T]his court has the inherent power to correct the judgment to reflect what the law requires. (§ 1260; *People v. Smith* (2001) 24 Cal.4th 849, 854; *In re Sandel* (1966) 64 Cal.2d 412, 417–418.)" (*People v. Guiffre* (2008) 167 Cal.App.4th 430, 435.) Here, the abstract should reflect the imposition of a \$200 restitution fund fine (§ 1202.4) and the mandatory parole revocation fine (§ 1202.45), stayed pending revocation of

parole. Probation having been revoked, the abstract should also reflect that the \$200 probation revocation fine imposed under section 1202.44 is now due.

DISPOSITION

The trial court is ordered to correct the minutes and abstract of judgment to reflect the imposition of a \$200 restitution fund fine under section 1202.4; a \$200 mandatory parole revocation fine under section 1202.45, stayed pending revocation of parole; and that the \$200 probation revocation fine under section 1202.44 is now due, probation having been revoked. The trial court is directed to forward a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. So modified, the judgment is affirmed.

RAYE, P. J.

We concur:

BLEASE, J.

NICHOLSON, J.